

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1578 OF 2003
IN
SUIT NO.145 OF 2003

M/s.Padam Exports & Anr.	...Plaintiffs
Vs.	
Union of India & Anr.	...Defendants

Mr.G.L.Jain for Plaintiff No.1
Plaintiff No.2 in person and
Proprietor of Plaintiff No.1.
Mr. S.R. Rajguru for Defendants

CORAM: SMT.R.S.DALVI, J.
DATED: 26TH JULY, 2005

P.C.

1. The suit is filed to claim compensation and additional compensation totally aggregating to Rs.20,2009835878 for rejection of a licence under the Duty Exemption Scheme of the Defendants. The Plaintiff's licence dated 17th January, 1994 was submitted to the Defendants on 4th February, 1994. The Defendants were to take 15 days for its disposal. This was upon the premise that there were no objections and irregularities.

2. The Defendants by their letter dated 6th May, 1994, which is stated to have been received by the Plaintiff on 27th June 1994, closed the Plaintiff's case and allowed the Plaintiff to reopen his case and

reapply to the Defendants upon satisfying two conditions mentioned therein. Those two conditions were :-

(i). That the Plaintiff gave separate weight of the ingot items being bangles and boxes and

(ii). since the Plaintiff's application was made for the first time for licence he would be eligible to the extent of Rs.25 lakhs.

The Plaintiff's licence was for Rs.48 lakhs.

3. Instead of complying with these two requisitions, the Plaintiff wrote his letter dated 28th June, 1994 to the Defendants contending that the net weight of the box was not necessary to be given as per their policy since the export was only of the bangles and that its weight can be seen from the Plaintiff's application itself and insisted upon a licence to the extent of Rs.4898750 on top most priority basis.

4. The Defendants by their letter dated 19th August, 1994 stated that the Plaintiff's request was rejected for the four reasons mentioned therein. This reply interalia shows that the Plaintiff's valuation was exorbitant to the extent of Rs.100/- per bangle which was found lacking in bonafides by the

Defendants.

5. The Plaintiff has resorted to, and by now exhausted, all the remedies available to him, after his application came to be rejected by the Defendants.

6. He filed the first appeal, second appeal, SLP, made a representation to the Ministry of Commerce, filed a complaint before the Consumer Forum, filed a Civil Appeal before the National Commission and also took recourse to the Human Rights Commission. Each of these proceedings has been dismissed.

7. Finally the Plaintiff has sued for compensation and additional compensation. The Plaintiff's claim to the extent of Rs.202009835878 is required to be shown to be prima facie valid.

8. The annexures to the Plaint show that the Plaintiff's application has not been rejected without any grounds. The Plaintiff has been directed to reapply upon complying with reasonable requisitions of the Defendants. The Plaintiff has failed to do so.

9. The Plaintiff claims that other Exporters have been issued licence and hence, he has been discriminated. Each licence has to be seen and evaluated upon its own merits. The Defendants have contended that all the applications which did not have

deficiencies and which complied with the requirements have been passed and the deficient applications like that of the Plaintiff have been rejected.

10. The Plaintiff contends that his application was not considered within 15 days during the year 1993-94 and if that was done the limit upon the export of Rs.25 lakhs would not have been applicable to the Plaintiff's case. He contends that, that limit came to be introduced for the first time after 1st April 1994, but his application should have been granted before that date.

11. Though being called upon to show the new policy of the Defendants which came into force from 1st April 1994 laying down for the first time the limit of Rs.25 lakhs for the first application, the Plaintiff has been unable to show that fact.

12. It can be prima facie seen that the Plaintiff's case of compensation to the extent claimed by him is most egregious and exorbitant. Therefore, prima facie case for grant of such damages is not seen to have been made out.

13. In this light the Plaintiff's Notice of Motion has to be considered.

14. In the Notice of Motion the Plaintiff has

claimed Ex-parte decree, exemption from payment of Court fees, 50% amount of the final order and decree to be paid over to the Plaintiff and the costs of this Notice of Motion.

15. Written statement has already been filed in this suit on 15th July, 2003 despite the Plaintiff's objection. That having been allowed to be filed by an earlier order, prayer (a) does not survive.

16. Since the suit is for damages/compensation, it has to be valued advelorum. Paragraph 52 of the Plaint itself shows the Plaintiff's admission that he has to pay maximum Court fees of Rs.3 lakhs. The Plaintiff applies for waiver of the Court fees. There is no provision in law for waiving Court fees required to be paid advelorum under the Court Fees Act.

17. The Plaintiff has applied for free legal aid as well as for payment of Court fees by the Legal Services Authority, under the Legal Services Authority Act, 1987. The Plaintiff is a person having an annual income less than Rs.50,000/-. Hence, he would be eligible for grant of services under the Legal Services Authority Act, as per the other provisions of that Act.

18. Under Section 13(i) of that act persons who satisfy the criteria under Section 12 (which the

Plaintiff does) would be entitled to receive legal services provided the concerned Authority is satisfied that such person has a prima facie case to prosecute or defend.

19. The Plaintiff has paid Court fee of Rs.3000/- instead of Rs.3 lakhs on 20th December, 2002 when he filed the suit. He undertook to pay balance Court fees within three months of that date. Thereafter he the undertaking for payment of court fees has been extended from time to time. The Plaintiff failed to pay. The Plaintiff instead called upon the Legal Services Authority to pay the balance Court fees of Rs.297000/-. That application came to be rejected by the Secretary of the High Court Legal Services Committee, Bombay on 18th October, 2003. Thereafter the Plaintiff pursued the Legal Services Authority for legal aid. By a further letter dated 24th December, 2004 of the Secretary, High Court Legal Services Committee, Bombay the Plaintiff's matter was closed with regard to legal aid also.

20. The Plaintiff has relied upon these letters since he has a grievance against the Secretary of the High Court Legal Services Committee, Bombay also. It is to test the Plaintiff's contention for obtaining not only free legal aid but Court fees to the extent of Rs.297000/-, that the prima facie case of the Plaintiff comes up for consideration as required under

Section 13(1) of the Legal Services Authority Act, 1987.

21. It is indeed seen that the Plaintiff has no prima facie case to claim the extent of compensation claimed by him for refusal to grant him the licence that he applied for in 1994. In fact prima facie the Plaintiff's case is seen to be barred by the law of limitation. Consequently the Plaintiff cannot be granted the relief under prayer (b) of the Notice of Motion also.

22. The Plaintiff's further prayer for payment of 50% of the amount at this stage before leading any evidence and before proving any damages suffered by him to be entitled to any compensation is totally devoid of any merit. Prayer (c) must also therefore be rejected.

23. In fact it is seen that the suit though properly valued, is written upon paper insufficiently stamped. The Plaintiff must therefore pay additional Court fee of Rs.2,97,000/-. The Plaint is therefore, liable to be rejected under the provisions of Order 7 Rule 11 (c) of the C.P.C. if the Plaintiff does not supply the requisite stamp paper having payment of deficit court fee. Hence, the following order.

O R D E R

1. The Notice of Motion is dismissed.
2. The Plaintiff shall pay costs of Notice of Motion fixed at Rs.3000/- to the Defendants.
3. The Plaintiff shall pay the balance Court fee of Rs.2,97,000/- within 4 weeks.
4. Liberty to apply to both parties for further directions after 4 weeks.

(SMT.R.S.DALVI, J.)